



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 2

FUNERAL DIRECTORS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

1. GENERAL INFORMATION

Subsection 24 of Section 1760 of the Sales and Use Tax Law exempts from tax "sales of funeral services."

"Sales of funeral services" will be considered to mean sales of tangible personal property by a funeral director insofar as such sales are a necessary part of the preparation of a human body for burial, or a necessary part of the ceremony conducted by the funeral director prior to or in connection with the burial of a human body.

2. EXEMPT SALES.

In accordance with the above, sales by funeral directors of caskets, vaults, boxes, clothing, crematory urns, or other similar items generally referred to as "funeral furnishings", are exempt from tax.

3. TAXABLE SALES.

Sales of tangible personal property by funeral directors of items as an accommodation rather than as an integral part of the funeral service (or preparation therefor), such as sale of flowers, or items of a similar character, will be considered taxable.

Sales by other retailers in connection with funerals are subject to sales tax. Examples of such sales would be sales of flowers by florists for delivery to a funeral, sales of tombstones by memorial works, etc.

4. PURCHASES.

a. Purchases for Own Use. Purchases by funeral directors of materials and equipment used by them in carrying out their services are taxable. Thus embalming fluids, chemicals, cosmetics and instruments used in embalming, furniture, acknowledgement cards furnished by funeral directors, other equipment, and motor vehicles purchased by funeral directors for use in their occupation are subject to tax. Items enumerated herein are illustrative only, and not intended to be a comprehensive list.

On those items which funeral directors use in their businesses rather than selling in the form of tangible personal property, tax should be paid to the supplier at the time of purchase. If purchases are made from outside the State and tax was not paid to the supplier, the funeral director should report and pay the use tax on such items. Items used rather than resold will include instruments used in embalming, as well as other furniture and equipment purchased for use in the establishment.

b. Purchases for Resale. When a retailer purchases tangible personal property for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether the purchase is for resale or not and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.**

5. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: (207) 287-4477**

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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752 - Definitions

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by 1754 or is registered under 1756.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity.

36 §1760 - Exemptions

24. Funeral services. Sales of funeral services.

36 §1861 - Imposition of Use Tax

A tax is imposed, at the respective rate provided in 1811, on the storage, use or other consumption in this State of tangible personal property or a service the sale of which, if it had occurred in this State, would be subject to tax under 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the tax or has taken a receipt from his seller, as duly authorized by the State Tax Assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. Retailers registered under 1754 or 1756 shall collect the tax and make remittance to the State Tax Assessor. The amount of the tax payable by the purchaser shall be that provided in the case of sales taxes by 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for his own use, use tax liability accrues at the date of withdrawal.